



Sean T. O'Kelly, Esq.
sokelly@okorlaw.com
Direct: (302) 778-4001

May 27, 2021

Via CM/ECF

The Honorable Maryellen Noreika
United States District Court
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3555

Re: *First Wheel Management, Limited v. Inventist, Inc., and Shane Chen* (1:17-cv-1059 MN)

Dear Judge Noreika:

I write on behalf of Plaintiff, First Wheel Management, Ltd. ("First Wheel"), to respectfully request that the Court postpone the pretrial and trial dates in this matter due to travel restrictions in place as a result of the coronavirus pandemic. A pretrial conference is presently scheduled for June 14, 2021, with a 5-day jury trial set to commence on June 21, 2021. The parties have conferred, and although Defendants do not oppose this request, they have provided a separate statement at the end of this letter, to which Plaintiff also responds.

The Reason for Plaintiff's Request for Postponement:

In addition to concerns about the safety and practicality of conducting a jury trial under the current circumstances, travel by Plaintiff's witnesses (except for one) for trial is presently impossible. Of most importance, Timur Artemev and Azamat Sultanov, both key fact witnesses for Plaintiff First Wheel, are domiciled in the United Kingdom. Under the Presidential Proclamation dated January 25, 2021, non-citizens of the United States cannot enter into the country if they have been in the United Kingdom.¹ Mr. Artemev in particular has made considerable effort to obtain an exemption to the travel restrictions by requesting expedited consideration by the U.S. visa service and outreach to the U.S. Ambassador to the U.K., to no avail. We alerted Defendants in this case to this situation as soon as it was apparent that Mr. Artemev's efforts were unsuccessful.

Given the lagging progress of vaccination efforts and the concern over the presence of variant coronavirus strains in the U.K., it appears highly unlikely that the President's travel restrictions as to the U.K. will be lifted before the beginning of June. Accordingly, none of First Wheel's trial witnesses residing in the U.K. can travel to Delaware for trial as presently scheduled. First Wheel has only one trial witness, Mr. Daniel Wood, who resides in Portland, Oregon, that is free to travel to Delaware now. Given these impediments to travel, the parties respectfully request

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/proclamation-on-the-suspension-of-entry-as-immigrants-and-non-immigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease/>

that the pretrial conference and trial be postponed to the fall of 2021, and rescheduled at a date convenient for the Court.

Defendants Inventist, Inc. and Shane Chen's Statement:

Although it is clear Plaintiff was aware of this issue for quite some time, Defendants were never made aware this issue could arise, and only first received word of this situation on May 25th, less than a month prior to trial. Indeed, it appears Plaintiff has faced a fundamental problem involving some of its witnesses for trial since the Court scheduled the case for trial six months ago, but neglected to advise the Court or Defendants until this week. Defendants meanwhile have been diligently preparing for trial in the event the matter is not resolved through pending summary judgment motions. Notwithstanding, Defendants recognize the situation and cannot reasonably oppose First Wheel's request to postpone trial, though Defendants would prefer to proceed to reach a resolution on a case that has been pending for four years. Defendants are also concerned regarding the duplication of trial preparation efforts and fees that will occur with a re-scheduled trial that could have been avoided with earlier notice of this issue.

Defendants are prepared to proceed with the hearing on summary judgment, and believe the scheduled pretrial conference, should it be required, should proceed at this time as well. Defendants also believe, should the trial be rescheduled, that a pending dispute regarding a large number of witnesses not previously proffered for deposition (currently identified as "may call" witnesses by Plaintiff) be resolved now as it may impact the number of days needed for trial. This can be addressed during the pretrial conference, but should the Court reschedule the pretrial conference along with the trial, Defendants respectfully suggest additional letter briefing on this topic would be appropriate before the trial is rescheduled.

Plaintiff's Response to Defendants' Statement:

The limited purpose of this letter is to request that the trial in this matter be postponed because Plaintiff's witnesses are unable to appear at trial due to travel restrictions. One month before trial (not three weeks), Plaintiff notified Defendants immediately upon learning that Plaintiff's witness's efforts to get relief from the Presidential Proclamation prohibiting their travel to the U.S. had failed. There was no delay; rather, there was simply no way of knowing with certainty before May 25 that Plaintiff's witnesses would be unable to appear at trial. It is especially true that Plaintiff had no way of knowing six (6) months ago that its witnesses would be unable to travel for trial in June, as Defendants contend.

All of that aside, with regard to the "may call" witness issue, Plaintiff's witness list was tendered to Defendants a week ago, without the benefit of having seen Defendants' contribution to the pretrial order, their proposed exhibits, deposition designations, or objections to Plaintiff's exhibits and deposition designations. As has been explained to Defendants, Plaintiff's "may call" witness list will likely be reduced considerably and might be eliminated entirely, depending on

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Defendants' objections (or lack thereof) to Plaintiff's proposed trial materials. To the extent this represents a dispute at all, the parties have not had an opportunity yet to resolve it amongst themselves, because the parties are simply not at that point in their joint pretrial exchanges. Plaintiff does not view it as ripe for consideration by the Court.

The fact remains that Plaintiff's witnesses residing in the U.K. cannot appear at trial next month. We therefore respectfully request the pretrial conference and trial be postponed until some time in the fall of 2021, after the issues giving rise to this request have abated.

Counsel are available at the Court's convenience if Your Honor would like to discuss this request.

Sincerely,

/s/ Sean T. O'Kelly

Sean T. O'Kelly, Esq.
O'KELLY & O'ROURKE, LLC